

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

CARLOS BARROS VILLAHERMOSA,)	
)	
)	
Plaintiff,)	
)	
v.)	Docket No. 06-1981(GZS)
)	
UNITED STATES OF AMERICA, et al)	
)	
)	
Defendants.)	
)	

ORDER DISMISSING WITHOUT PREJUDICE

Before the Court is Plaintiff's Notice of Voluntary Dismissal. (Docket # 33.) Federal Rule of Civil Procedure 41(a)(1) provides that "an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs" Fed. R. Civ. P. 41(a)(1). In general, Rule 41(a)(i) has been construed literally. Forte v. Beerman, No. 91-1892, 1991 U.S. App. LEXIS 33037, at *4 (1st Cir. Dec. 11, 1991). Where a "plaintiff properly invoke[s] [the right to voluntarily dismiss the case under Rule 41(a)(1)], [] the district court ha[s] no power to condition its dismissal." Universidad Central Del Caribe, Inc. v. Liaison Comm. on Med. Educ., 760 F.2d 14, 19 (1st Cir. 1985).

On July 30, 2007, Defendant United States of America filed Defendant's Response to Notice of Voluntary Dismissal. (Docket # 35.) Through this response,

Defendant USA urges the Court to dismiss this case with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). Defendant USA asserts that Plaintiff has wasted the time and resources of the Court by repeatedly filing for needless extensions and has also attempted to circumvent review by this Court of the Magistrate Judge's May 24, 2007 Recommended Decision.¹ The Court is sympathetic to this argument and a review of the record supports the position of Defendant USA.

Nonetheless, Rule 41(a)(1)(i) provides the Court with no discretion to curtail or qualify a dismissal where an answer or motion for summary judgment has not yet been filed. See Matta-Ballesteros v. United States, No. 94-2276, 1995 U.S. App. LEXIS 27528, at * 4 (1st Cir. Sept. 26, 1995) (reversing dismissal of case with prejudice where defendant had filed a motion to dismiss before plaintiff filed a notice of voluntarily dismissal pursuant to Rule 41(a)(1), but defendant had not filed an answer or a motion for summary judgment). Further, once a notice of voluntarily dismissal of the case has been properly filed under Rule 41(a)(1), the Court lacks jurisdiction to review a Recommended Decision. See Foss v. Federal Intermediate Credit Bank, 808 F.2d 657, 660 (8th Cir. 1986) (ordering dismissal without prejudice pursuant to Rule 41(a)(1)(i) after magistrate recommended the case be dismissed as meritless but before an answer or motion for summary judgment was filed, and stating that the district court was without jurisdiction thereafter to decide the merits of the appeal). In this case, although Defendant filed a

¹ For example, Plaintiff filed a Motion for Leave to file an Amended Complaint (Docket # 19), and was granted until May 17, 2007 to do so (Docket # 23). Plaintiff, however, never filed an amended complaint. In addition, on June 2, 2007, Plaintiff filed a Motion for Extension of Time to File a Response or Reply to the Magistrate Judge's May 24, 2007 Recommended Decision. (Docket # 29.) The Motion was granted on June 6, 2007. (Docket # 30.) On July, 16, 2007, rather than file an objection to the Recommended Decision, Plaintiff filed a Notice of Voluntary Dismissal.

motion to dismiss, there has been neither an answer nor a motion for summary judgment.

Therefore it is **ORDERED** that the case is **DISMISSED WITHOUT PREJUDICE**.

/s/ George Z. Singal

Chief United States District Judge

Dated: August 1, 2007